

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LODSYS, LLC, et al.,

Plaintiffs,

v.

BED, BATH & BEYOND, INC., et al.,

Defendants.

CIVIL ACTION NO. 2:12-cv-00729-JRG
LEAD CASE

LODSYS GROUP, LLC,

Plaintiff,

v.

GAMELOFT USA, INC.,

Defendant,

v.

APPLE INC.,

Intervenor and Counter-
Claimant.

CIVIL ACTION NO. 2:13-cv-00248-JRG

LODSYS GROUP, LLC,

Plaintiff,

v.

GAMEVIL USA, INC.,

Defendant,

v.

CIVIL ACTION NO. 2:13-cv-00249-JRG

APPLE INC.,

Intervenor and Counter-
Claimant.

LODSYS GROUP, LLC,

Plaintiff,

v.

POCKET GEMS, INC.,

Defendant,

v.

APPLE INC.,

Intervenor and Counter-
Claimant.

LODSYS GROUP, LLC,

Plaintiff,

v.

CAESARS INTERACTIVE
ENTERTAINMENT, INC.,

Defendant,

v.

APPLE INC.,

Intervenor and Counter-
Claimant.

LODSYS GROUP, LLC,

Plaintiff,

v.

GLU MOBILE, INC.,

Defendant,

v.

APPLE INC.,

Intervenor and Counter-
Claimant.

CIVIL ACTION NO. 2:13-cv-00252-JRG

CIVIL ACTION NO. 2:13-cv-00272-JRG

CIVIL ACTION NO. 2:13-cv-00275-JRG

INTERVENOR APPLE INC.'S NOTICE OF CASE MANAGEMENT SUBMISSION

Intervenor Apple Inc. (“Apple”) hereby submits this statement to request permission to file a summary judgment motion on the issues of patent license and exhaustion as soon as is practicable in Case Nos. 2:13-cv-00248, 2:13-cv-00249, 2:13-cv-00252, 2:13-cv-00272, and 2:13-cv-00275 (the “Developer Actions”)¹ and that the Court waive its letter brief requirement with respect to the filing of such motions, as was done in the first action filed by plaintiff Lodssys, LLC (now Lodssys Group, LLC) (“Lodssys”). *See* Case No. 2:11-cv-00090, Dkt. No. 377.

As the Court is aware, Apple was permitted to intervene in an earlier, related proceeding with respect to the issues of patent license and exhaustion. Case No. 2:11-cv-272, Dkt. No. 105 (later consolidated with lead case 2:11-cv-00090, the “*Brother Int’l Action*”). As Apple demonstrated in connection with its motion seeking leave to intervene, Lodssys’s infringement allegations relate to technology and services provided largely or exclusively by Apple as to which Apple is licensed. *See* generally Case No. 2:11-cv-272, Dkt. No. 4 (Apple’s Motion to Intervene). Lodssys did not oppose Apple’s intervention in the Developer Actions, which present the same or similar issues. *See* Case Nos. 2:13-cv-00248, Dkt. No. 8; 2:13-cv-00249, Dkt. No. 8; 2:13-cv-00252, Dkt. No. 9; 2:13-cv-00272, Dkt. No. 8; and 2:13-cv-00275, Dkt. No. 8 (Apple’s Unopposed Motions to Intervene).

An early summary judgment motion on Apple’s license and exhaustion defenses will not cause delay or otherwise disrupt the case schedule in the Developer Actions. Apple anticipates that only very limited discovery will be required to present this issue, given that Lodssys has already had a full opportunity to pursue discovery from Apple and its developers in the *Brother Int’l Action*. Among other things, Apple has already produced thousands of pages of

¹ The Developer Actions were consolidated with Lead Case No. 2:12-cv-00729 for pretrial purposes on August 2, 2013.

technical and licensing documents, responded to Lodsyst's written discovery requests, presented corporate designees regarding technical and licensing issues for deposition testimony, and assembled and provided access to its source code. This discovery will in most cases be equally applicable in the Developer Actions.

Furthermore, summary adjudication of Apple's license and exhaustion defenses will best advance the interests of efficiency and judicial economy. Because Lodsyst's infringement allegations with respect to iOS products revolve around the use of licensed Apple technology, an early summary judgment motion could moot or refine many of the claims and defenses in this action and avoid the need to proceed with wasteful discovery, motion practice, and other pretrial proceedings in the Developer Actions. Indeed, on July 22, 2013, Apple filed a motion for summary judgment in the *Brother Int'l* Action, asserting that Lodsyst's claims based on sales through the Apple App Store were barred both by Apple's License and by the doctrine of patent exhaustion. *See Brother Int'l Action*, Dkt. No. 767.

For the reasons set out above, Apple respectfully requests that the Court permit an early motion for summary judgment on the issues of license and patent exhaustion with respect to Lodsyst's claims against the defendants in the Developer Actions² and waive its letter briefing requirement with respect to such motions.

² Those defendants are Glu Mobile, Caesars Interactive, Gamevil, Pocket Gems and Gameloft.

Dated: August 22, 2013

Respectfully submitted,

By /s/ Melissa Richards Smith

Melissa Richards Smith

Texas State Bar No. 24001351

GILLAM & SMITH, L.L.P.

303 South Washington Avenue

Marshall, Texas 75670

Telephone: (903) 934-8450

Facsimile: (903) 934-9257

E-mail: melissa@gillamsmithlaw.com

Jeffrey E. Ostrow (admitted *pro hac vice*)
SIMPSON THACHER & BARTLETT LLP
2475 Hanover Street
Palo Alto, California 94304
Tel: (650) 251-5000
Fax: (650) 251-5002
jostrow@stblaw.com

**Counsel for Intervenor and Counter-Claimant
Apple Inc.**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 22nd of August, 2013.

/s/ Melissa Richards Smith

Melissa Richards Smith